



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.12.2021**

CORAM:

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. (MD) Nos. 17630 of 2018 & 7624 of 2017

and

W.M.P. (MD) No. 15510 of 2018

WEB COPY

W.P. (MD) Nos. 17630 of 2018:

Y. Suresh Kumar

...Petitioner

/Vs./

1. The Government of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home (Police-2) Department,
Secretariat, Fort St. George, Chennai.
2. The Director General of Police,
Chennai.
3. The Additional Director General of Police,
Law and Order, Chennai.
4. The Deputy Inspector General of Police,
Tiruchirapalli Range,
Tiruchirapalli.
5. The Superintendent of Police,
Trichy District.
6. The Superintendent of Police,
Dharmapuri District.
7. The Superintendent of Police,
Salem District.
8. The Superintendent of Police,
Thanjavur District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus directing the respondents to promote the petitioner to the post of DSP in the present batch in the current year in the ensuing promotion pursuant to the pre-promotional training given to the petitioner under order dated 19.06.2018.

For Petitioner
For Respondents

: Mr. N. Dilip Kumar
: Mr. A. K. Manikkam
Special Government Pleader



W.P. (MD) Nos. 7624 of 2017:

Y. Suresh Kumar

...Petitioner

/Vs./

1. The Principal Secretary to the Government,
Home Department, Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Chennai-04.

3. The Deputy Inspector General of Police,
Salem Range, Salem.

4. The Superintendent of Police,
Dharmapuri District.

5. The Deputy Superintendent of Police,
Kulithalai Range,
Karur District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of punishment passed by the 4th respondent Superintendent of Police, Dharmapuri dated 26.12.2012 in PR.No.20/2012 and the order of rejection passed in the appeal by the 3rd respondent Deputy Inspector General of Police, Salem range, Salem dated 07.02.2014 in Appeal No.13/2014 and the rejection order passed by the 2nd respondent Director General of police dt.20.01.2016 in R.Dis.No.010113/AP.2(2)/2015 and quash the same and issue a consequential direction to the respondents to consider the petitioner for promotion to the post of Deputy Superintendent of Police with effect from the date on which his immediate juniors was promoted with all attended consequential and other benefits.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.A.K.Manikkam

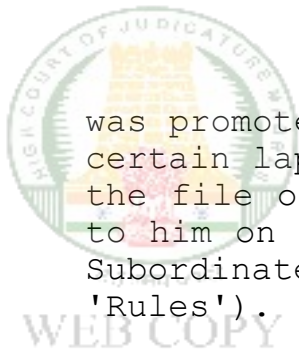
Special Government Pleader

COMMON ORDER

A common order is passed in both these writ petitions, since the persona involved as well as the sequence of relevant facts are one and the same.

2. The petitioner joined the uniformed services as a Sub-Inspector of Police, by way of direct recruitment on 01.03.1996 and

<https://hcservices.ecourts.gov.in/hcservices/>



was promoted through the ranks, over the years. He was charged with certain lapses in the matter of investigating Crime No.49 of 2011 on the file of Harur Police Station and a show cause notice was issued to him on 23.05.2012 in terms of Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (in short 'Rules').

3.The charges were enquired into and a show cause notice was served upon the petitioner on 09.07.2012. On the same day, the petitioner submitted a request, admittedly received by the Superintendent of Police, as it is acknowledged, requesting that he be supplied with the documents cited in the show cause notice issued by the authorities. The petitioner also specifically sought information in regard to an earlier incident involving the Special Sub-Inspector of Police, one V.Panneerselvam also stationed in the same police station.

4.The petitioner had alleged on an earlier occasion that Paneerselvam along with certain others had availed unauthorized leave and that an enquiry ought to have been initiated in that regard. Preliminary report had also been filed by the Additional Superintendent of Police and the petitioner sought information in regard to the stage of enquiry.

5. This point appears to have been raised only to indicate the possible existence of hostility inter se the petitioner and the said Panneerselvam that might have had a bearing upon the proceedings initiated. Admittedly, the petitioner was not supplied with the documents sought for by him, being the statement of V.Panneerselvam, dated 27.07.2011 stated to have been recorded by the enquiry officer, ie., the Additional Superintendent of Police and memo dated 19.04.2012 issued by the Deputy Inspector General of Police addressed to the Superintendent of Police.

6. Both the aforesaid documents form part of the show cause notice and the petitioner, in line with the requirement under Rule 3 (a) of the Rules, is entitled to copies of the same to enable him to furnish an informed reply and response to the allegations in show cause notice. While not being supplied with the copies as sought for, the petitioner received an order imposing punishment of postponement of increment for a period of three years without cumulative effect, vide order dated 26.12.2012.

7.It is relevant to mention at this juncture that the procedure set out under Rule 3(a) of the Rules contemplates that the authority imposing punishment should hear the delinquent, after furnishing him a copy of the enquiry report and soliciting his response to the same. This procedure has however been given a go-by in this particular case. The order imposing punishment also does not refer to the specific request of the petitioner under cover of his



letter dated 09.07.2012 seeking certain documents relied upon by the authorities.

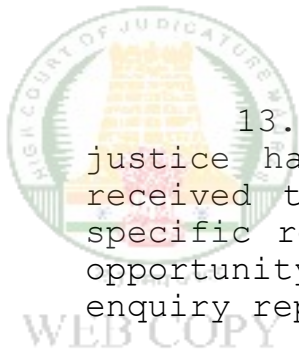
8. The petitioner filed an appeal as against the order of punishment before the third respondent, who, by his order dated 07.02.2014 confirmed the same.

9. Briefly put, the charges as against the petitioner were that being the superior authority in Harur Police Station, he had failed to take up investigation in Crime No.49 of 2011 in a proper manner. FIR had been registered in terms of Sections 279 and 304 (A) of the IPC, whereas the authority was of the view that since the person involved in the incident had ultimately died, the case ought to have been registered in terms of Section 302 of IPC. Yet another allegation was the alleged failure of the petitioner to conduct enquiry with the doctor who had conducted post mortem on the deceased, one Valli, and ascertain that the case was only an accident.

10. The defence of the petitioner was that on the date of occurrence of the incident, which was 19.01.2011, he had not been in the site of the incident, but had been attending bundobust duty in the premises of the Tamil Nadu Civil Supplies Corporation at Ganapathipatty Village. He had opted for this assignment specifically for the reason that a serious law and order problem was anticipated at Ganapathipatty on account of communal clash between two factions in that area, and in order to avoid any untoward incident.

11. Between 19th of January and 21st of January, he had been on the aforesaid bundobust duty. On 23rd and 24th of January, he had attended the station and carried out routine works. However, the investigation of the incident in question continued with the SSI Panneerselvam, who had been on site, when the incident had occurred and who had taken over and been in charge of the enquiry and investigation of the same. File had not been handed over to the petitioner for further action and it was Panneerselvam who had continued to attend that matter.

12. The petitioner had been relieved from Harur Police Station on 24.01.2011, transferred to Salem District and assigned to a specific police station there. Thus, he had had no occasion whatsoever to address the incident in question or conduct enquiry thereupon. As regards the charge that he had not conferred or enquired with the doctor who had conducted post mortem upon the victim in the incident in question, the petitioner would submit that the post mortem certificate itself had been received only on 13.03.2011 and the question of enquiry with the Doctor would arise only thereafter, whereas even as on 24.01.2011, he was out of the picture, as he had been transferred.



13. The petitioner pointed out that the principles of natural justice had been grossly violated in the matter, as he had not received the documents relied upon by the authorities, despite a specific request in that regard. He had also not been afforded an opportunity of personal hearing prior to the formulation of the enquiry report.

14. The officer imposing the punishment had not called upon him to tender his explanation either at the stage of enquiry or at the subsequent stages in the proceedings. Therefore, the impugned order was vitiated by gross violation of the principles of natural justice as it had proceeded without any opportunity to him to put forth his case or defend himself.

15. This last is admitted and no defence is put forth in this regard. The gross violation of procedure is apparent from the narration of facts and in the proceedings. As against appellate order dated 07.02.2014, the petitioner preferred a statutory revision before the second respondent, who also dismissed the same, by his order dated 20.01.2016. Order dated 20.01.2016 is cryptic and has been passed without an opportunity of personal hearing and merely relying upon the orders of the lower authorities.

16. The petitioner filed the present writ petition, also simultaneously filing a review before the Principle Secretary to Government. Pending writ petition, the review has also come to be rejected.

17. For completion of narration, the parties would circulate a copy of the Judgment of Additional District and Sessions Judge, Dharmapuri, in Sessions Case No. 75 of 2011, wherein the accused in that case, one Murugan, who had been driving the motorbike, wherein the deceased Valli had been riding pillion, had been charged with offence under section 302 of IPC.

18. The accused was acquitted and the judgment records the deposition of PW 16, one Doctor Anbumani, who has deposed categorically to the effect that the deceased had been conscious and oriented when she had been brought to the hospital. He had deposed that her demise was an accident caused by her stole getting tangled in the wheel of the motorbike and her consequential fall from the bike.

19. This was accepted as the cause of her demise and the judgment refers to this factual position on more than one occasion (see paras 18 & 23 of the judgment). Though not directly relevant, it would serve to support the case of the petitioner to the extent to which ultimately, the raising of the charge under section 304(A), and not section 302, stood vindicated. This is over and above the position that the petitioner had nothing whatsoever to do with the



enquiry and investigation of the incident in question.

20. Learned Special Government Pleader was requested to produce the records to ascertain the factual position as to the absence of the petitioner from the Harur Police Station between 19.01.2011 and 24.01.2011. It is appalling to note that the General Diary for the period in question, that would have served to establish the presence or otherwise of the petitioner, is said to be missing. In any event, no serious defence is put forth in regard to the position that the petitioner was not present in the Harur police station, had been on bundobust duty in Ganapathipatti Village on 19.01.2011 and had been transferred out of Harur police station to Salem on 24.01.2011.

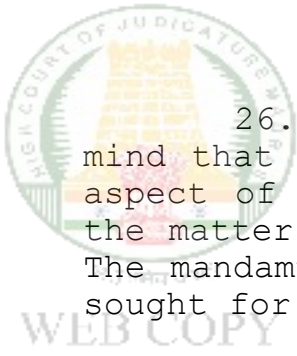
21. The counter filed to WP.(MD)No.17630 of 2018 though containing 20 paragraphs contains nothing of substance. As regards the counter filed in W.P.(MD)No.7624 of 2017, the tentative defence put forth in regard to the non-furnishing of documents is that the petitioner had been asked to inspect the documents, but had chosen not to do. This submission is rejected straightaway.

22. Rule 3 of the Rules makes it clear that the show cause notice issued to a delinquent is expected to be accompanied by all documents stated in the notice itself and in any event, the authorities are expected to have furnished copies of all documents relied upon by them in framing of charges.

23. Only then will a delinquent have had proper opportunity to equip himself with the materials relied upon by the authorities, and furnish an appropriate defence to the charges levelled as against him. Thus, while the statement that he was permitted to inspect the documents is itself suspect, even assuming that such opportunity had been granted to him, it is wholly inadequate and does not serve to comply with the principles of natural justice.

24. As regards the non-service of notices prior to the imposition of punishment, the authorities would state that VHF messages were passed on to the petitioner reminding him to offer his explanation to the charge. Messages sent over very high frequency (VHF) over walkie-talkie is the regular mode of internal communication by the members of the uniformed force and is certainly not expected to be utilized as a mode of service of notices. Such a statement is absurd to say the least.

25. There is thus no doubt in my mind that the petitioner has not been called upon by any of the authorities, that is, and to make it clear, the enquiry officer, the authority imposing punishment, the appellate authority, the revisional authority or the State prior to passing of the impugned orders.



26. In view of the discussion as above, I have no doubt in my mind that the impugned orders are liable to be quashed both on the aspect of improper procedure followed as well as on the merits of the matter and they are so quashed. All consequences shall follow. The mandamus as sought for in WP.(MD) No. 17630 of 2018 is issued as sought for and both the writ petitions are allowed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

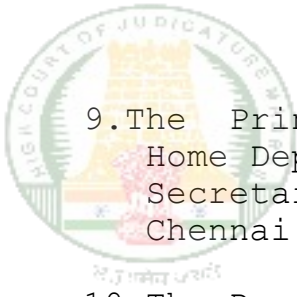
Sub Assistant Registrar (CS)

sm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional Chief Secretary to Government,
Home (Police-2) Department,
Secretariat, Fort St. George,
Chennai.
2. The Director General of Police,
Chennai.
3. The Additional Director General of Police,
Law and Order, Chennai.
4. The Deputy Inspector General of Police,
Tiruchirapalli Range, Tiruchirapalli.
5. The Superintendent of Police, Trichy District.
6. The Superintendent of Police,
Dharmapuri District.
7. The Superintendent of Police,
Salem District.
8. The Superintendent of Police,
Thanjavur District.



9. The Principal Secretary to the Government,
Home Department,
Secretariat, Fort St. George,
Chennai - 600 009.

10. The Deputy Inspector General of Police,
Salem Range, Salem.

11. The Deputy Superintendent of Police,
Kulithalai Range, Karur District.

+1 CC to M/s. N. DILIPKUMAR, Advocate (SR-38400[F] dated 13/12/2021)

+1 CC to M/s. SPL GP (SR-38378[F] dated 13/12/2021)

W.P. (MD) Nos. 17630 of 2018 & 7624 of 2017

10.12.2021

RD(31.01.2022) 8P 14C